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## CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Patent Ext., Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on the below date:

Date: June 10, 2004 Name: Nicholas M. Boivin, Reg. No. 45,650 Signature:

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& LIONE

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Keith Wood et al.

Appln. No.: 09/813,279

Filed: March 19, 2001

For: Method for Detection of ATP

Attorney Docket No: 10743-6

Examiner: Louise N. Leary

Art Unit: 1654

Mail Stop Patent Ext.  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

## TRANSMITTAL

Sir:

## Attached is/are:

- ☒ Check for \$200.00; Application for Correction of Patent Term Adjustment under 37 C.F.R. § 1.705(b) [including Tabs A-D]
- ☒ Return Receipt Postcard

## Fee calculation:

- ☐ No additional fee is required.
- ☐ Small Entity.
- ☐ An extension fee in an amount of \$\_\_\_\_\_ for a \_\_\_\_\_-month extension of time under 37 C.F.R. § 1.136(a).
- ☐ A petition or processing fee in an amount of \$\_\_\_\_\_ under 37 C.F.R. § 1.17(\_\_\_\_\_).
- ☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$9=			x \$18=	
Indep.		Minus			x 43=			x \$86=	
First Presentation of Multiple Dep. Claim					+\$145=			+\$290=	
					Total	\$		Total	\$0

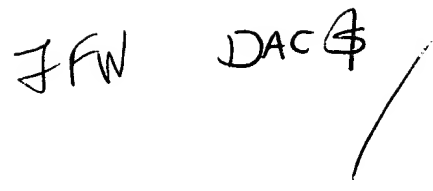
## Fee payment:

- ☒ A check in the amount of \$200.00 for the Application for Correction of Patent Term Adjustment fee is enclosed.
- ☐ Please charge Deposit Account No. 23-1925 in the amount of \$\_\_\_\_\_. A copy of this Transmittal is enclosed for this purpose.
- ☐ Payment by credit card in the amount of \$\_\_\_\_\_ (Form PTO-2038 is attached).
- ☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

Nicholas M. Boivin (Reg. No. 45,650)

June 10, 2004  
Date



## REMARKS

U.S. Patent Application No. 09/813,279 was allowed on May 4, 2004 with a published term adjustment under 35 U.S.C. § 154(b) of 0 days. Applicants herein apply to the U.S. Patent and Trademark Office for correction of the Patent Term Adjustment calculation pursuant to 37 C.F.R. § 1.705(b). Applicants have enclosed a check for the fee under 37 C.F.R. § 1.18(e) for filing this Application for Correction of Patent Term Adjustment. In the event that additional funds are required for the fee for Application for Correction of Patent Term Adjustment under 37 C.F.R. § 1.18(e), please charge any additional necessary fee to Deposit Account No. 23-1925. Please credit for any excess fee paid to Deposit Account No. 23-1925. A duplicate copy of this Application for Correction of Patent Term Adjustment is attached.

The patent term adjustment for U.S. Patent Application No. 09/813,279 is calculated as discussed below. Dates are specified based on the Patent Application Information Retrieval (PAIR) system Patent Term Adjustment History (attached at **Tab A**).

Note that U.S. Patent Application No. 09/813,279 is not subject to a terminal disclaimer.

### **37 C.F.R. § 1.703 Adjustment for Period of Examination Delay**

Applicants agree with the USPTO calculation of the period of adjustment under 37 C.F.R. § 1.703(a)(1) of 380 days.

### **37 C.F.R. § 1.704 Reduction in Period of Adjustment**

With respect to the grounds for adjustment set forth in 37 C.F.R. § 1.703(a)-(e), an applicant is deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods or time in excess of three months that are taken to reply to any notice or action by the Office. Any such three month period is measured from the date the notice or action was mailed to the applicant. The period of adjustment set forth in 37 C.F.R. § 1.703 shall be reduced by the number of

days beginning on the day ("the 3 month date") after the date that is three months after the date of mailing of the Office communication.

Applicants respectfully assert that the U.S. Patent and Trademark Office has improperly assessed a 475 day Reduction in Period of Adjustment under 37 CFR § 1.704, instead of an 8 day Reduction, related to the filing of a series of responses to three U.S. Patent and Trademark Office requests for Sequence Listings in computer readable format. Applicants have submitted fully compliant Sequence Listings on three separate occasions.

A Notice to File Missing Parts was mailed on May 23, 2001 ("Missing Parts Notice"). The Missing Parts Notice recited, among other items, a failure to provide a copy of the Sequence Listing in computer readable format and a corresponding Statement under 37 CFR § 1.821(f) ("Statement") that the Sequence Listing corresponds to the Sequence recited in the above referenced application as filed.

Applicant timely filed a Response to the Missing Parts Notice that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("First Response"). The First Response was received by the USPTO on July 26, 2001 (See Postcard at **Tab B**), less than three months after the Missing Parts Notice was mailed. The First Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Applicant delay was incurred in responding to the Missing Parts Notice.

On October 22, 2001, a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("First Sequence Listing Notice"). The First Sequence Listing Notice requested the filing of a second substitute computer readable Sequence Listing and Statement.

On January 30, 2002, Applicants' fully compliant response to the First Sequence Listing Notice was received by the U.S. Patent Office (See Postcard at **Tab C**). In fact, on December 18, 2001, Applicants mailed the substitute Sequence Listing and Statement ("Second Response") containing a second computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was computer readable and

fully compliant with 37 CFR §§ 1.821-1.822. Despite having timely mailed the Second Response less than three months after the First Sequence Listing Notice was mailed, the Second Response was not received until January 30, 2002, over a month after the mailing date. Accordingly, under 37 CFR § 1.704(b), Applicants are assessed a Reduction in Period of Adjustment of 8 days, through no fault of the Applicants, in replying to the First Sequence Listing Notice.

On October 1, 2002, a second Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was mailed ("Second Sequence Listing Notice"). The Second Sequence Listing Notice requested the filing of a third substitute computer readable Sequence Listing and Statement.

On November 13, 2002, Applicants' fully compliant response to the Second Sequence Listing Notice was received by the U.S. Patent and Trademark Office (See Postcard at **Tab D**), that contained, among other things, the Sequence Listing in computer readable format along with the required Statement ("Third Response"). The Third Response was received by the USPTO less than three months after the Missing Parts Notice was mailed. The Third Response included a computer disk containing a Sequence Listing in computer readable format that Applicants respectfully assert was both computer readable and fully compliant with 37 CFR §§ 1.821-1.822. Therefore, no Reduction in Period of Adjustment was incurred in responding to the Second Sequence Listing Notice.

A Notice of Allowance was mailed on May 4, 2004. In reviewing the Notice of Allowance and the Patent Term Adjustment History on the PAIR page of the U.S. Patent and Trademark Office Website (See **Tab A**), Applicants noticed the period for Reduction in Period of Adjustment under 37 CFR § 1.704 was improperly calculated as 510 days, resulting from the sum of an alleged 475 day Reduction in Period of Adjustment ("Reduction") related to the filing of Sequence Listings as discussed above, and a 35 day Reduction related to the filing of an Information Disclosure Statement.

Applicants acknowledge that the U.S. Patent and Trademark Office has assessed a further Reduction in Period of Adjustment of 35 days under 37 CFR § 1.704(d) relating to

the filing of an Information Disclosure Statement received by the U.S. Patent and Trademark Office on September 29, 2003.

However, the PTO incorrectly assessed 475 days instead of 8 days of Reduction in Period of Adjustment related to the Sequence Listing Filings discussed above (from the mailing date of the Notice of Missing Parts on May 23, 2001 to the date the application was deemed complete on December 11, 2002).

Thus, only a 43 day total Reduction in Period of Adjustment under 37 CFR § 1.704 should have been assessed, rather than a 510 day Reduction as the U.S. Patent and Trademark Office calculated.

#### **Total Patent Term Adjustment**

For the present application, the total Patent Term Adjustment ("PTA") under 37 C.F.R. § 1.703(f) is the period of adjustment under 37 C.F.R. § 1.703 reduced by the reduction under 37 C.F.R. § 1.704. The total PTA is thus 380 days under 37 C.F.R. § 1.703 – 43 days under 37 C.F.R. § 1.704 = 337 days.

Applicants respectfully request that the determination of Patent Term Adjustment be corrected prior to issuance of the above-referenced application.

Respectfully submitted,



Nicholas M. Bolvin  
Registration No. 45,650  
Attorney for Applicants

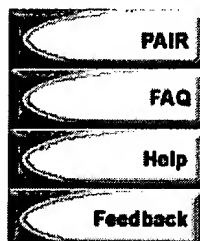
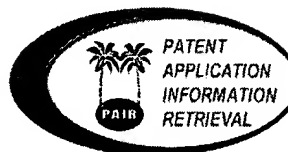
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200



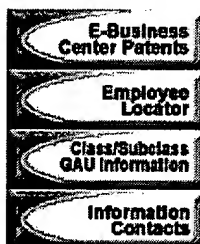
United States Patent and Trademark Office

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## PATENT APPLICATION INFORMATION RETRIEVAL



### Other Links


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Search results for application number:09/813,279			
Application Number:	09/813,279	Customer Number:	-
Filing or 371(c) Date:	03-19-2001	Status:	Notice of Allowance Mailed Application Received in Off Publications
Application Type:	Utility	Status Date:	05-24-2004
Examiner Name:	LEARY, LOUISE N	Location:	ELECTRONIC
Group Art Unit:	1654	Location Date:	-
Confirmation Number:	1759	Earliest Publication No:	US 2003-0104507 A1
Attorney Docket Number:	10743/6	Earliest Publication Date:	06-05-2003
Class/ Sub-Class:	435/008	Patent Number:	-
First Named Inventor:	Keith Wood, Madison, WI (US)	Issue Date of Patent:	-
Title Of Invention:	METHOD FOR DETECTION OF ATP		

Select Search Option

Continuity Data  
 Patent Term Adjustment History  
 Published Documents

File History	
Date	Contents Description
05-26-2004	Sequence Forwarded to Pubs on Tape
05-24-2004	Receipt into Pubs
05-20-2004	Workflow - File Sent to Contractor
05-04-2004	Mail Notice of Allowance
05-03-2004	Issue Revision Completed
05-03-2004	Notice of Allowance Data Verification Completed
05-03-2004	Notice of Allowability
02-17-2004	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received
02-24-2004	Date Forwarded to Examiner
02-17-2004	Response after Non-Final Action
11-28-2003	Mail Non-Final Rejection



11-17-2003	Non-Final Rejection
09-29-2003	Information Disclosure Statement (IDS) Filed
09-03-2003	Date Forwarded to Examiner
08-25-2003	Response after Non-Final Action
06-03-2003	Mail Non-Final Rejection
06-02-2003	Non-Final Rejection
04-17-2003	Case Docketed to Examiner in GAU
03-03-2003	Information Disclosure Statement (IDS) Filed
02-27-2003	Case Docketed to Examiner in GAU
12-12-2002	Application Dispatched from OIPE
12-11-2002	Application Is Now Complete
11-12-2002	Additional Application Filing Fees
11-12-2002	CRF Disk Has Been Received by Preexam / Group / PCT
12-09-2002	CRF Is Good Technically / Entered into Database
10-01-2002	SEQUENCE ERRORS
01-30-2002	Additional Application Filing Fees
01-30-2002	CRF Disk Has Been Received by Preexam / Group / PCT
03-08-2002	CRF Does Not Match Application Specification -- Applicant Must Co
10-22-2001	SEQUENCE ERRORS
09-12-2001	CRF Is Flawed Technically / Not Entered into Database
05-23-2001	Notice Mailed--Application Incomplete--Filing Date Assigned
05-23-2001	Correspondence Address Change
04-04-2001	IFW Scan & PACR Auto Security Review
03-19-2001	Initial Exam Team nn

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Case No: 10743/6  
Serial No.: 09/813,279  
Applicant: Keith Wood et al.



Please acknowledge receipt of the below identified:

**Items Mailed:** Transmittal Letter (in duplicate); Response to Notice to File Missing Parts; Copy of Notice to File Missing Parts; Check for \$40; Assignment Recordal Cover Sheet; Assignment; Declaration; Power of Attorney; Statement According to 37 C.F.R § 1.821(f); Sequence Listing; Diskette; and Return Postcard Evidencing Receipt of Same.

**Date of Mailing:** July 23, 2001

BRINKS HOFER GILSON & LIONE  
Thomas J. Wrona/fi

Case No. 10743/6  
Applicant Keith Wood et al.

Hon. Commissioner of Patents & Trademarks  
Washington, D.C. 20231



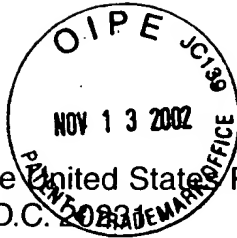
Please acknowledge receipt of the below identified

Serial No: Keith Wood et al.  
Transmittal letter (in duplicate); Statement According to 37 C.F.R.  
1.821 (f); Sequence Listing; Diskette containing Sequence Listing;  
and postcard evidencing same

BRINKS HOFER GILSON & LIONE

By: Gregory M. Zinkl, Ph.D.

Date of Mailing: December 18, 2001



Case No. 1043/6  
Applicant WOOD

Director of The United States Patent & Trademark Office  
Washington, D.C. 20590

Please acknowledge receipt of the below-identified:

Serial No 09/813,279

Items Mailed Response to Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; copy of Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence; Statement Verifying Identical Paper and Computer Readable Copy, two (2) floppy disks containing computer readable copy of sequence listing; paper copy of sequence listing; transmittal letter (in duplicate) and postcard evidencing receipt

BRINKS HOFER GILSON & LIONE

By: J. Matthew Buchanan, Reg. No. 47,459

Date of Mailing November 11, 2002